

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT WHITE,

Case No. 3:25-cv-00089-MMD-CLB

Petitioner,

ORDER

v.

STATE OF NEVADA, *et al.*,

Respondents.

Pro se Petitioner Robert White filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 ("Petition"), and following the Court's initial review of the Petition, White was ordered to show cause why his Petition should not be dismissed with prejudice as untimely. (ECF Nos. 1, 4.) White timely complied. (ECF No. 11.) For the reasons discussed below, the Court dismisses the Petition with prejudice as untimely.

I. BACKGROUND¹

White challenges a conviction and sentence imposed by the Second Judicial District Court for Washoe County ("state court"). On October 1, 1999, the state court entered a judgment of conviction, convicting White of second-degree murder. White was sentenced to life in prison with the possibility of parole after 10 years. White did not appeal his judgment of conviction. On June 11, 2024, White filed a state habeas petition. The state court denied the petition, White appealed, and the Nevada Court of Appeals affirmed on January 31, 2025. *See White v. State*, No. 88990-COA, 2025 WL 366083, *1 (Nev. App. Jan. 31, 2025). White is currently on parole.

¹ The Court takes judicial notice of the online docket records of the Second Judicial District Court and Nevada appellate courts. These docket records may be accessed at: <https://www.washoecourts.com/Query/DetailedCaseSearch> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 On February 14, 2025, White filed his Petition, asserting that the Department of
2 Parole and Probation did not make its sentencing recommendation on a standard set
3 forth in any regulation in compliance with its statutory mandate, resulting in inaccurate
4 and subjective content being considered by his sentencing judge in violation of his due
5 process rights. (ECF No. 1.)

6 **II. DISCUSSION**

7 The Antiterrorism and Effective Death Penalty Act (“AEDPA”) establishes a one-
8 year period of limitations for state prisoners to file a federal habeas petition pursuant to
9 28 U.S.C. § 2254. The one-year limitation period (365 days) begins to run from the latest
10 of 4 possible triggering dates, with the most common being the date on which the
11 petitioner’s judgment of conviction became final by either the conclusion of direct
12 appellate review or the expiration of the time for seeking such review. See 28 U.S.C.
13 § 2244(d)(1)(A). The federal limitations period is tolled while “a properly filed application
14 for State post-conviction or other collateral review with respect to the pertinent judgment
15 or claim is pending.” *Id.* at § 2244(d)(2). But no statutory tolling is allowed for the period
16 between finality of a direct appeal and the filing of a petition for post-conviction relief in
17 state court because no state court proceeding is pending during that time. See *Nino v.*
18 *Galaza*, 183 F.3d 1003, 1006-07 (9th Cir. 1999); *Rasberry v. Garcia*, 448 F.3d 1150, 1153
19 n.1 (9th Cir. 2006).

20 Because White did not file a direct appeal to the Nevada appellate courts
21 challenging his judgment of conviction, his conviction became final on the date in which
22 the time for seeking direct review expired: November 1, 1999. See NEV. R. APP. P. 4(b)(1)
23 (requiring a notice of appeal to “be filed with the district court clerk within 30 days after
24 the entry of the judgment or order being appealed”); *Gonzalez v. Thaler*, 565 U.S. 134,
25 137 (2012) (stating that when a state prisoner “does not seek review in a State’s highest
26 court, the judgment becomes ‘final’ on the date that the time for seeking such review
27 expires”). The federal statute of limitations thus began to run the following day on
28 November 2, 1999. Accordingly, the limitations period expired 365 days later on

1 November 2, 2000. Although White filed a state habeas petition on June 11, 2024, it was
 2 filed after the AEDPA clock had already expired. As such, White's state habeas petition
 3 could not have tolled an already expired limitations period. *See Jiminez v. Rice*, 276 F.3d
 4 478, 482 (9th Cir. 2001). Accordingly, White filed his Petition more than 24 years after the
 5 AEDPA limitation period expired.

6 In his response to the order to show cause, White contends that his one-year
 7 limitations period began running on a later date. (ECF No. 11.) Specifically, White argues
 8 that the "essential facts and information were not previously available to him" until the
 9 Nevada Court of Appeals decided *Vasquez v. State*.² (*Id.* at 1.) White fails to demonstrate
 10 that delayed accrual—even if deemed appropriate under 28 U.S.C. § 2244(d)(1)(B), (C),
 11 or (D), which the Court does not find—would affect the timeliness of his Petition given
 12 that (1) the operative start date of his AEDPA limitations period would be the date
 13 *Vasquez* was decided, (2) *Vasquez* was decided in 2020, and (3) White did not seek
 14 habeas relief within a year of *Vasquez* being decided. *See Dodd v. United States*, 545
 15 U.S. 353, 360 (2005) (concluding that, under the similar provision in 28 U.S.C. § 2255(f),
 16 the one-year limitations period started running on the date in which the Court initially
 17 recognized the right asserted). As such, the Court finds that White's Petition is untimely
 18 and dismisses it with prejudice.

19 **III. CONCLUSION**

20 It is therefore ordered that the Petition (ECF No. 1) is dismissed with prejudice
 21 as untimely.

22 It is further ordered that a certificate of appealability is denied, as jurists of reason
 23 would not find dismissal of the Petition for the reasons stated herein to be debatable
 24 or wrong.

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 27 ²In *Vasquez v. State*, the Nevada Court of Appeals remanded the case to the
 28 district court, concluding that it "abused its discretion by sentencing Vasquez without due
 consideration to his objections to the PSI." No. 79409-COA, 2020 WL 4696206, *1 (Nev.
 App. Aug. 12, 2020).

1 It is further ordered that the Clerk of Court add Nevada Attorney General Aaron D.
2 Ford as counsel for Respondents,³ informally serve the Nevada Attorney General with
3 the Petition (ECF No. 1), this Order, and all other filings in this matter by sending notices
4 of electronic filing to the Nevada Attorney General's office, enter final judgment,
5 dismissing this action with prejudice, and close this case.

6 DATED THIS 11th Day of April 2025.



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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

³No response is required from Respondents other than to respond to any orders of a reviewing court.